

APPEAL NO. 040358
FILED APRIL 8, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 13, 2004. The hearing officer determined that the respondent's (claimant) impairment rating (IR) is 44% as certified by the Texas Workers' Compensation Commission (Commission)-appointed designated doctor. The appellant (carrier) appealed, asserting that the hearing officer's determination is contrary to the great weight and preponderance of the evidence, and additionally asserting legal and procedural error. The claimant responded, urging affirmance.

DECISION

Affirmed.

On appeal, the carrier asserts that the hearing officer committed reversible error in denying the carrier's motion to depose the designated doctor on written questions. The carrier asserts that the answers to its questions were necessary because they went both to the designated doctor's qualifications to issue an IR, and the basis upon which the IR was actually issued. We review the hearing officer's rulings on the issuance or refusal to allow written deposition questions on an abuse-of-discretion standard. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(e) (Rule 142.13(e)) provides that a party seeking to take a deposition must obtain permission from the hearing officer. Under the circumstances of this case, we find no abuse of discretion in the hearing officer's denial of the carrier's request for the deposition. There is no indication in the record that the hearing officer was unaware of the designated doctor's qualifications, and the designated doctor's records contain sufficient information for the hearing officer to determine what information the designated doctor relied upon in determining the claimant's IR.

Section 408.125(e) provides that where there is a dispute as to the IR, the report of the Commission-selected designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is accorded the special, presumptive status accorded to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993.

Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor was a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Finding sufficient evidence to support the hearing officer's determination, and no reversible legal or procedural error perceived, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **THE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DOROTHY C. LEADERER
1999 BRYAN STREET
DALLAS, TEXAS 75201.**

Daniel R. Barry
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge